

Application No. 09/543,207  
Docket No. Y0999-470  
Amendment dated June 28, 2004  
Reply to Office Action of April 2, 2003

### REMARKS

In the Office Action, the Examiner reviewed claims 1-33 of the above-identified US Patent Application, with the result that claim 1 was rejected under 35 USC §102(e) in view of U.S. Patent No. 6,502,131 to Vaid et al (Vaid), and all of the claims were rejected under 35 USC §103 in view of U.S. Patent No. 6,006,264 to Colby et al. (Colby) in view of Vaid. In response, Applicants have amended the claims as set forth above. More particularly:

Independent claims 1, 16 and 25 have each been amended to specify in their preambles that the system controls and manages the outbound traffic (18) by computing a target rate ( $R_t$ ) for each customer traffic type ( $i,j$ ) that supports the outbound bandwidth usage-based service level agreements of form ( $B_{min}, B_{max}$ ) and then admitting a portion of the inbound traffic (14) at an admitted rate ( $R_a$ ) while rejecting at a rejected rate ( $R_r$ ) a remaining portion of the inbound traffic (14) that if processed would cause the outbound traffic for the customer traffic type ( $i,j$ ) to exceed the target rate ( $R_t$ ).

Independent claims 1, 16 and 25 have been further amended to specify that the expected bandwidth usage ( $b$ ) is used to compute the target rate ( $R_t$ ), and that inbound traffic (14) is admitted based on the target rate ( $R_t$ ) by rejecting inbound traffic (14) that exceeds the target rate ( $R_t$ ).

Support for these amendments can be found, for example, lines 6-8 of page 9, lines 6-8 of page 10, and Figure 6 (using the expected bandwidth usage ( $b$ ) to compute

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a target rate ( $R_t$ )), and lines 14-20 of page 9 and lines 8-24 of page 12 (admitting and rejecting inbound traffic based on the target rate  $R_t$ ).

Applicants believe that the above amendments do not present new matter. Favorable reconsideration and allowance of claims 1-33 are respectfully requested in view of the above amendments and the following remarks.

### **Rejection under 35 USC §102**

As noted above, independent claim 1 was rejected under 35 USC §102(e) as being anticipated by Vaid. Applicants respectfully request reconsideration of this rejection in view of the amendments presented above as well as the following comments.

As noted in §2131 of the MPEP:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the ...claim. The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e. identity of terminology is not required. (Citations omitted).

Under the §102 rejection, the Examiner explained that Vaid discloses each element of Applicants' invention, including:

- means for collecting the rejected rate ( $R_r$ ) of inbound traffic;
- means for collecting the outbound traffic (B);

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- means for computing an expected bandwidth usage (b) per TCP connection request;
- means for computing the target rate (Rt) that supports the outbound bandwidth usage-based service level agreements; and
- limiter means for admitting inbound traffic based on the target rate (Rt) and for tracking the volume of admitted inbound traffic (Ra) and the volume of rejected inbound traffic (Rr) for each customer traffic type (i,j).

As an initial matter, the Examiner did not indicate, and Applicants were unable to find, where Vaid teaches Applicants' claimed means (20,28) for collecting the outbound traffic (B) and means (20) for computing the target rate (Rt). As such, the Examiner has not established that Vaid discloses "each and every element as set forth in the claim."

While the above is sufficient for requesting withdrawal of the §102 rejection, Applicants further note that the passage cited by the Examiner as disclosing a means for collecting a rejected rate of inbound traffic (column 4, lines 49-61) does not expressly or inherently describe that the rejected rate is collected. In addition, the passage cited by the Examiner as disclosing a means for computing an expected bandwidth usage (column 6, lines 27-33) does not appear to support such a conclusion since Vaid's "traffic profiling" is merely "cumulative" and intended for "long term" use, not real-time usage as required to make decisions as to whether to admit or reject inbound traffic. Still further, regarding the passage cited by the Examiner as disclosing a limiter means

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for admitting inbound traffic based on a target rate (column 7, lines 15-23), Applicants fail to see that this limitation is expressly or inherently described.

Finally, Applicants believe that Vaid does not disclose or suggest the limitations introduced into claim 1 (as well as claims 16 and 25), namely, expected bandwidth usage is used to compute the target rate, and the limiter means rejects inbound traffic that exceeds the target rate.

For all of the above reasons, Applicants respectfully request withdrawal of the rejection to the claims under 35 USC §102.

#### **Rejection under 35 USC §103**

Under the §103 rejection, the Examiner explained that Colby discloses Applicants' invention recited in the independent claims except for Applicants' means (20) for computing the expected bandwidth usage (b), means (20) for computing the target rate (Rt), and limiter means (22) for admitting inbound traffic based on the target rate (Rt). The Examiner then relied on the teachings of Vaid for such teachings. However, for the reasons stated in Applicants' response to the §102 rejection, Applicants believe that Vaid fails to disclose or suggest these elements, particularly as now recited in Applicants' amended independent claims 1, 16 and 25. Applicants therefore respectfully request withdrawal of the rejection to the claims under 35 USC §103(a).

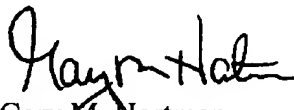
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**Closing**

In summary, Applicants believe that the claims define patentable novelty over all the references, alone or in combination, of record. It is therefore respectfully requested that this patent application be given favorable reconsideration.

Should the Examiner have any questions with respect to any matter now of record, Applicants' representative may be reached at (219) 462-4999.

Respectfully submitted,

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